APPEAL NO. 022713
FILED DECEMBER 16, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on August 29, 2002. The hearing officer determined that the appellant's (claimant) compensable injury of _____, does not extend to include an injury to the claimant's low back and that the claimant had disability resulting from an injury sustained on _____, beginning October 28, 2000, and continuing through November 27, 2000. The claimant appealed the extent-of-injury determination on sufficiency of the evidence grounds and the period of disability found by the hearing officer. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed, as reformed.

The carrier attached to its response a medical report dated August 8, 2002, that was not in evidence at the hearing. In deciding whether the hearing officer's decision is sufficiently supported by the evidence, we generally will not consider evidence that was not submitted into the record at the hearing and raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that a case be remanded for further consideration, we consider whether it came to the offering party's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that to be the case with the medical report attached to the carrier's response that was neither offered nor admitted into evidence at the hearing.

The hearing officer did not err in reaching the complained-of determinations. The issues of extent of injury and disability involve questions of fact for the hearing officer to resolve. The evidence before the hearing officer was conflicting. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Additionally, we take note of the carrier's observation that the hearing officer's Finding of Fact No. 11 appears to have an inadvertent typographical error, namely, that

the dates of disability are listed incorrectly as 2001, rather than 2000. The hearing officer's Conclusion of Law No. 4 and the Decision paragraph list the correct disability dates as "beginning October 28, 2000, and continuing through November 27, 2000." We reform the hearing officer's Finding of Fact No. 11 to read "October 28, 2000" where it reads "October 28, 2001" and "November 27, 2000" where it reads "November 27, 2001."

Finding sufficient evidence to support the decision of the hearing officer, and no reversible error in the record, we affirm the decision and order of the hearing officer as reformed.

The true corporate name of the insurance carrier is **ROYAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICES COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Veronica Lopez
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Robert W. Potts
Appeals Judge